UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.240
27 November 1995

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Fifteenth session

SUMMARY RECORD OF THE 240th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 22 November 1995, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE (continued)

ORGANIZATIONAL AND OTHER MATTERS (continued)

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Italy (continued)

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GE.95-14558 (E)

The meeting was called to order at 10.15 a.m.

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE (agenda item 7) (continued) (CAT/C/XV/Misc.3)

New rule 69: Withdrawal of a member

1. The CHAIRMAN invited the Committee to consider the proposed new rule 69, which read:

> "If, for any reason, a member of the Committee considers that he shall not take part or continue to take part in the proceedings relating to the consideration and/or the general comments on a report submitted by a State party under article 19 of the Convention, he shall inform the Chairman of his withdrawal."

2. Mr. BURNS said that before looking at the text, he wished to draw attention to the preambular statement which had been previously discussed: "The Committee agreed that if a member felt in good conscience that he could not take part in deliberations concerning his country, he would withdraw. If the member felt that he could take part, he would participate in the debate on procedure, but not in the decision of substance." Committee practice had adhered to that principle since its previous session, and it was now necessary to amend the rules of procedure accordingly. Rule 104 did not reflect the two different circumstances on which the Committee had agreed: in matters of substance there should be no participation, and in matters of procedure, if the member felt that he should not for any reason participate, he should give notice to the Chairman that he would not do so but would not be obliged to leave the room. In that connection he expressed dissatisfaction with the term "withdrawal", which meant physical removal and thus did not convey the Committee's intention. He would leave it to the secretariat to determine the appropriate term.

3. The CHAIRMAN, referring to Mr. Burns comments on rule 104, asked whether new rule 75, which he proceeded to read out, met Mr. Burns' point.

4. Mr. BURNS said that it did not because it was not a matter of leaving the decision to the individual, except for procedural questions. In all other cases it was for the Chairman to determine whether the matter was a substantive one since the Committee had decided that, if it was, the member should not participate. He simply wanted the rules of procedure, and particularly those relating to articles 20 and 22, to reflect the Committee's decision. He suggested two short statements: "Members shall withdraw when matters of substance are dealt with by the Committee" and "Members may, if they choose, withdraw when matters of procedure are dealt with by the Committee".

5. Mr. SORENSEN expressed his confusion due to the fact that new rule 69 came under the heading of "Reports from States parties under article 19 of the Convention", and yet the proposed text was to come under "Proceedings under article 20 of the Convention". Which article was under discussion? Different rules applied to different articles; he would welcome clarification.

6. Mr. BURNS said that he had been referring to the decisions taken at the previous session concerning participation by members in proceedings under articles 19, 20 and 22. Articles 20 and 22 were currently under discussion. He reiterated his previous comments.

7. Returning to the question of withdrawal, he said that even if a member did not wish to participate, he saw no reason why that member should not remain present to listen to the debate.

8. Mr. SORENSEN requested that following the discussion of the preamble, the various rules should be discussed under first article 19, then article 20 and lastly article 22.

9. Mr. EL IBRASHI agreed with Mr. Burns and Mr. Sorensen. The text did not reflect the Committee's previous decisions. It was necessary to distinguish between non-participation and withdrawal. In the case of non-participation the member should inform the Chairman of his decision not to participate. In his view, the text must be redrafted. During debates on procedure, members from the country under discussion were entitled to participate unless they had declared they did not wish to do so; for matters of substance they did not have to withdraw but they were not entitled to participate.

10. Taking up Mr. Sorensen's point, he said that the rules should either apply to articles 19, 20 and 22 or each rule should be dealt with separately. He proposed the setting-up of a small drafting group to prepare a text.

11. Mr. BRUNI (Secretary of the Committee) explained that the proposed texts were based on discussions held during previous sessions at which no specific decision had been taken. The Committee had simply said at the end of its discussions that in the future, when considering amendments to the rules of procedure, it should include in those rules a text which would apply to articles 19, 20, 21 and 22, with the necessary adaptations, based on current rule 104, which applied to the withdrawal of a member during proceedings under article 22. The whole tenor of the rules in question could be revised in accordance with members' wishes.

12. Mr. BURNS observed that the Secretary's statement reflected one of the deficiencies in the Committee's decision-making process. Members operated by consensus, and often at the end of a debate it was not clear whether consensus had been reached or not. He suggested that once members had completed their debates, they should draw conclusions. To proceed in that manner would assist the secretariat. He assured members that he had no intention of reopening the debate; he believed that the Committee had reached a consensus which it was important to reflect in the rules of procedure.

13. The CHAIRMAN confirmed that a consensus had previously been reached and agreed that a small drafting group should be set up to prepare a text reflecting the outcome of the discussion.

14. Mr. SORENSEN said he was not opposed to the setting-up of a drafting group but thought that first individual members should make their contribution. Referring to Mr. El Ibrashi's suggestion of a common rule to cover articles 19, 20, 21 and 22, he favoured a different rule for each

article. If other members were in agreement, he felt the drafting group should take that principle as a starting-point. More input was required on the question of article 19 as it had not yet been discussed. He suggested the following text to be used for article 19: "He shall inform the Chairman of his non-participation but should be allowed to give technical and factual information". In his view, members should be allowed to give factual information even when not participating in discussions, given its utility to the Committee, but pointed out that that did not come under procedural matters. He would like the provision relating to article 19 to incorporate the idea that a member could choose not to participate but still be present if he so wished.

15. Mr. EL IBRASHI agreed with Mr. Sorensen that a distinction must be made between article 19 and articles 20 and 21. The rule on article 19 could be a separate case and provide for technical information which would prove helpful to the Committee. In his view, however, there was a similarity between articles 20, 21 and 22. Before the drafting group met, it was important to ensure there was consensus on the way in which the various articles should be dealt with.

16. Mr. YAKOVLEV said that a person who was present during the discussion of a report concerning his country or a fellow countryman was in a difficult position resulting from a conflict of interests. All members were supposed to be independent experts regardless of their country of origin. As that was not always entirely possible, the basis for a general rule should be that members should not be allowed to participate in the discussion of the substance of cases in question. In his view, a general rule relating to all articles, which would then be supplemented with specific details relating to articles 19, 20 and 22, could be taken as a starting-point.

17. Mrs. ILIOPOULOS-STRANGAS said she was not convinced that the solutions should be different for articles 19, 20, 21 and 22. They all related to general legal questions involving the interpretation of the Convention. It might sometimes be difficult to distinguish between procedure and substance. If, during a debate on a communication under article 22, there were difficulties relating to the interpretation of the Convention, all members, and there were only 10 of them, should give their opinion. Why should one be excluded from the outset? The decision before the Committee related to the interpretation of the various articles of the Convention. The principle behind the exclusion of a member or his choice not to participate related to partiality. However, withdrawal should occur only in specific cases and should not stop the member giving his legal opinion on the interpretation of the Convention. Impartiality did not always depend on a person's country of origin; it would be wrong to say that no member had personal preferences. Members were appointed as independent experts and should act accordingly. The only important point was for a member not to vote during deliberations on a case concerning his country. If a decision was made to accept the participation of members during discussions concerning their country, there was no reason to distinguish between articles 19, 20 or 22 of the Convention.

18. Mr. SLIM agreed with Mr. Burns that the term "withdrawal" did not reflect the discussion that had taken place during the previous session. He suggested replacing the current wording by "he may abstain from participating in the

deliberations of the Committee". He used the term "deliberations" purposely because the member concerned should be permitted to provide information and reply to questions raised by colleagues, but not to participate in decisions. That member was in the same position regardless of which article was under discussion; the main point was his attitude to the question relating to his country.

19. In his opinion, there were two possibilities. Either the member decided to abstain from participating in the Committee's deliberations and would simply intervene to provide information or reply to questions; there would be no need for him to withdraw. Or if the member had no problems of conscience, he could decide to participate. In that case, the rules of procedure would oblige him to participate in procedural matters only. A small drafting group should devise a text reflecting that view. In his opinion, the situation was the same as far as articles 19, 20, 21 and 22 were concerned.

20. The CHAIRMAN considered that members who did not have a problem of conscience should be given the option of abstaining entirely. They could be told that not only must they not participate in matters of substance but in addition they were not obliged to participate in procedural matters or in providing information.

21. Mr. SLIM explained that that was why he had suggested the words "he may abstain".

22. Mr. SORENSEN said that there were three different situations to be taken into consideration, that relating to discussions about a State party in a public session under article 19, that relating to discussions about States parties in closed session under articles 20 and 21, and that relating to discussions about individuals in closed session under article 22, in which connection rule 103 was also important. The three situations could only be covered by a very general rule which would allow members not only to be impartial, but to demonstrate their impartiality by participating only in connection with the central facts and nothing else.

23. The CHAIRMAN, agreeing that different situations required separate texts, suggested that they should be drafted by a group composed of Mr. Burns, Mr. El Ibrashi and Mr. Sorensen, for consideration at a later meeting.

24. Mrs. ILIOPOULOS-STRANGAS said that the consensus of the Committee first needed to be established so that the drafting group could be given proper guidelines. As to substance, it was more important to be truly impartial than to demonstrate impartiality, which could neither be acquired through procedures nor vary according to different situations. In addition, it was hard to see how one or more independent members could be excluded from discussions. The text should be left as it stood.

25. The CHAIRMAN said that the new rule was not intended to exclude anyone from discussions but to enable a person to decide, according to his conscience, whether or not to participate, even in procedural matters.

26. If there was no objection, therefore, he would take it that the Committee wished the drafting group to prepare an appropriate text for discussion and adoption at a later meeting.

27. It was so decided.

Rule 84: Summary account of the results of the proceedings

28. The CHAIRMAN invited the Committee to consider the proposed new paragraph 2 of rule 84, which read:

> "2. The Committee shall invite the State party concerned, through the Secretary-General, to inform the Committee directly or through its designated representative of its view concerning the question of a possible publication of a summary account of the results of the proceedings relating to the inquiry, and may indicate a time-limit within which the view of the State party should be communicated to the Committee."

29. The CHAIRMAN suggested that the words "the view of the State party" should be replaced by "the observations of the State party".

30. Mr. SLIM agreed. The word "observations" would make the text clearer.

31. It was so decided.

32. The CHAIRMAN invited the Committee to consider the proposed new paragraph 3 of rule 84, which read:

> "3. If it decides to include a summary account of the results of the proceedings relating to an inquiry in its annual report, the Committee shall forward, through the Secretary-General, the text of the summary account to the State party concerned as well as to the authors of the information on the basis of which the Committee decided to make the inquiry."

33. Mr. EL IBRASHI asked what was meant by "the authors of the information", what kind of information would be forwarded and for what purpose.

34. Mr. BRUNI (Secretary of the Committee) said that when the Committee had decided to publish the summary account of its findings following the inquiry concerning Turkey, the then Chairman had suggested that the procedure agreed upon at the time should be included in the rules of procedure at some future date. The procedure agreed upon was that, once a summary account was adopted, the State party and the source of any reliable information that torture was systematically being practised, i.e. the source which had given rise to the article 20 procedure, should be informed. The source had so far been NGOs. Only those sources whose information resulted in the article 20 procedure would be informed; information would not be forwarded either to the State party or to the source until the summary had been adopted and a press conference held.

35. Mr. EL IBRASHI was opposed to informing the authors of information. The Committee's duty was to cooperate with States; it risked putting the State and authors into conflict with each other by informing the author as well. Informing NGOs under the rules of procedure was tantamount to according them a higher status. Would the Committee also have to inform them if it decided not to proceed with an inquiry under article 20? And would it have to inform all suppliers of information or make some distinction between them? They would in any event receive information via the Committee's press conferences.

36. Mrs. ILIOPOULOS-STRANGAS said that while agreeing in principle with those views, she had no objection to giving the NGOs concerned a copy of the report if they so requested. However, only States were involved in the cooperation process under article 20. It was not the Committee's job to decide which of the sources had sent in reliable information or to pass on the results of any inquiry.

37. Mr. SORENSEN said that when the matter had been discussed several years earlier, the Committee had considered it only a matter of courtesy to report to the State party and the NGOs concerned. There was no question of sending a report to the NGOs but of sending a copy of the summary with the information that the Committee had completed its work and decided to include the summary in its annual report. Paragraph 3 was not really necessary.

38. The CHAIRMAN suggested that the substance of paragraph 3 would not be affected if the words "as well as to the authors ... the inquiry" were deleted.

39. Mrs. ILIOPOULOS-STRANGAS said that in legal terms the Committee was indeed required to draw a distinction between the State and the authors of information, as its partner under article 20 was the State. Furthermore, as article 20 also referred to reliable information, the Committee, by including the act of courtesy in its rules of procedure, would have to take a decision on the status of each party which had provided information.

40. Mr. EL IBRASHI fully supported that position. The Committee could not put NGOs and other organizations on the same footing as States parties to the Convention. If it undertook to inform NGOs and other sources as a matter of courtesy, it risked not only entering into a debate with them over its decision whether or not to proceed with an inquiry, but also becoming involved in lengthy correspondence, also as a matter of courtesy. The Chairman's suggestion was a good one.

41. Mr. BURNS pointed out that under article 20 the Committee was legally obliged to respond to information received from well-founded sources, whether they were other States or NGOs. The Committee could not function without the NGOs. It would have no information under article 19 without them; its two cases under article 20 had come from NGOs and under article 22 NGOs provided information on the circumstances in a country as well as information from the lawyers of applicants. Whether the Committee liked it or not, NGOs were part of its apparatus and acted as sources of material. By extending a courtesy to them, there was no question of elevating NGOs to the same status as States. There had been no doubt in either of the two recent inquiries as

to which parties had communicated with the Committee: it knew very well which the NGOs were and could deal with them if it so wished, even when there were several.

42. The real issue in the case under discussion was not the procedure. All members knew that a problem had arisen and what it was. There would not be another meeting until April 1996, when the information would be made public, the NGOs receiving it at about the same time as the State. The real problem was one of confidentiality. It would be inappropriate in every case to notify the State and the source at the same time, but the Committee should have the power to do so or not to do so as circumstances demanded. That flexibility and discretion would be provided if the words "and where appropriate" were inserted in the paragraph after the words "to the State party concerned". The Committee should take care not to get into a confrontational position with the NGOs as its work might be seriously affected.

43. Mr. SLIM said that he had doubts as to the usefulness of paragraph 3 and was not even certain that it was consistent with articles 20 and 24 of the Convention. The Committee had no legal links with the NGOs. Their role was to inform the Committee, but it was for the latter to decide whether the information was credible and whether to investigate. The Committee should then inform the State concerned, States parties and the General Assembly, but not the NGOs, which in any event would be able to acquaint themselves with the findings when they were made public in the Committee's annual report. More generally, he did not think that the Committee should give the impression that it considered the NGOs to be right and the State concerned to be wrong.

44. The information provided by the NGOs was invaluable, but the Committee should leave it at that. Mr. Sorensen's point that paragraph 3 might be regarded as superfluous was well taken.

45. Mr. SORENSEN said that there seemed to be a misunderstanding. There had never been any question in paragraph 3 of an exchange of letters with NGOs, nor had it ever been claimed that if the Committee did not make an inquiry it would also inform the NGO. It would inform the NGO only if it decided to include a summary account, the text of which could not appear until after the case was finished. It would be courteous to inform the State concerned that the summary account had been published. At the same time, the Committee should also inform those NGOs whose information had served as a basis for the Committee's decision to undertake an inquiry. If paragraph 3 posed difficulties, he suggested that it should be deleted; then there would be no misunderstanding, and everyone would have to wait for the annual report.

46. Mrs. ILIOPOULOS-STRANGAS agreed with Mr. Burns that the NGOs should be informed where appropriate. That might be the case if a request was made for the report. But she was against creating an obligation to inform the NGOs; that went beyond mere courtesy. She agreed with Mr. Slim that paragraph 3 should be deleted. It was important to make a distinction between States parties and reliable sources.

47. Mr. YAKOVLEV proposed that paragraph 3 should end with the word "concerned", the words that followed being deleted.

48. The CHAIRMAN said he took it that the Committee wished to adopt the amendment proposed by Mr. Yakovlev.

49. It was so decided.

New rule 91: Withdrawal of a member

50. The CHAIRMAN invited the Committee to consider the proposed new rule 91, which read:

> "1. If, for any reason, a member of the Committee considers that he shall not take part or continue to take part in the proceedings under article 21 of the Convention, he shall inform the Chairman of his withdrawal."

In the light of the earlier discussion that text would be submitted to the drafting group for further improvement.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Oral presentation by the Chairman of the report of the sixth meeting of persons chairing the human rights treaty bodies (A/50/505)

51. The CHAIRMAN reported on the sixth meeting of persons chairing the human rights treaty bodies, which had been held at the United Nations Office at Geneva from 18 to 22 September 1995.

52. The chairpersons had noted with satisfaction that improvements had been seen in the quality of a number of reports submitted by States parties and in the methods for the formulation of concluding observations. They had unanimously reaffirmed the important role of NGOs in the monitoring function of the treaty bodies. They had welcomed the ongoing efforts of the Secretary-General and the United Nations High Commissioner for Human Rights to promote universal ratification of international human rights instruments and, in particular, the preparations for the holding of regional conferences to promote ratification and the drafting of a major study on the matter. They had recommended that States which were considering ratification should avoid making it subject to wide reservations. They had noted with satisfaction the important role played by UNICEF in the promotion of universal ratification of the Convention on the Rights of the Child. They had also recommended that each treaty body should assiduously investigate compliance by State parties with the extensive obligations regarding education and the provision of public information on human rights in general and concerning the human rights instruments and the proceedings of the treaty bodies in particular. Treaty bodies should, inter alia, inquire whether instruments had been translated and disseminated in local languages and whether States parties had put in place satisfactory human rights training programmes for all relevant categories of public officials.

53. The chairpersons had noted with regret that the problem of overdue reports and severe backlogs persisted. They had recommended that treaty bodies should increase their cooperation and exchange of information with United Nations non-conventional human rights bodies and mechanisms and that

the General Assembly consider providing each treaty body with a budget for the contracting of special studies, the undertaking of essential missions and other matters associated with their mandates. They had expressed their deep concern at the understaffing of the treaty-body secretariats, lack of technical expertise and inadequate administrative support.

54. The chairpersons had declared their conviction as to the importance of the integration of the Committee on the Elimination of Discrimination against Women into the mainstream of United Nations system-wide activity through its relocation to the Centre for Human Rights in Geneva. They had accordingly welcomed that Committee's decision 14/II of January 1995. They had expressed the hope that work on developing appropriate databases and on-line information services at the Centre for Human Rights would proceed speedily.

55. Concerning gender perspectives in the work of the treaty bodies, the chairpersons had endorsed the recommendations proposed by an expert group, which had met at Geneva from 3 to 7 July 1995 to consider the matter. They had recommended that each treaty body should consider how it might most effectively incorporate those proposals into its work practices; the respective chairpersons had undertaken to report to the seventh meeting on progress made in that regard.

56. On prevention of human rights violations, including early warning and urgent procedures, the chairpersons had reiterated that the promotion and protection of all human rights and fundamental freedoms was a priority objective of the United Nations. In that regard, they had encouraged treaty bodies to continue their efforts to develop mechanisms for the prevention of human rights violations, including early warning and urgent procedures, and suggested that any action undertaken by one of the treaty bodies should be immediately brought to the attention of the other treaty bodies. They had also recommended that treaty bodies increasingly consult United Nations organs and bodies.

57. Lastly, with regard to assistance to States in implementing committee recommendations, the chairpersons had reiterated the importance of appropriate action by relevant United Nations bodies to assist States, through the provision of technical assistance, in implementing recommendations made by treaty bodies. The commitment expressed in that regard by representatives of specialized agencies and organizations participating in the meeting of chairpersons had been welcomed.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Italy (continued) (CAT/C/25/Add.4)

58. Mr. BRUNI (Secretary of the Committee) noted that Committee members had just received copies of a letter from Ambassador Giuseppe Baldocci, the Permanent Representative of Italy, addressed to the Chairman. To situate the letter in context he (Mr. Bruni) informed members of the overall situation. In formal terms the letter fitted into the framework of agenda item 3 (Submission of reports by States parties under article 19 of the Convention). At its previous session, on 27 April 1995, the Committee had considered the

second periodic report submitted by the Italian Government. It had then drafted conclusions relating to the report and requested additional information. The letter under consideration was accompanied by a voluminous report and several annexes. It included the information Committee members had requested, as well as observations on its conclusions.

59. Mr. EL IBRASHI said that the letter was very important and should be carefully considered. The Committee's conclusions should be examined in the light of the letter in question. Before acting, it was essential to know which supplementary information and documentation the letter referred to. A briefing on the content could perhaps be given by the secretariat.

60. Mr. YAKOVLEV said that the letter raised a very delicate problem in that it contained additional material received after the Committee had discussed the formal report submitted by the Italian Government. It was necessary to decide whether to reopen the consideration procedure on the basis of the new material. Under normal circumstances the procedure should not be reopened if a second set of material was received. The new material must not be ignored but the substance of the letter could not be considered before resolving the problem of whether to reopen the procedure.

61. Mr. SORENSEN observed that at the first meeting of the Committee's current session it had been decided to send any additional material immediately to the Country Rapporteurs so that they were aware of its contents. The debate should certainly not be reopened. Periodic debates took place for the discussion of new material. Furthermore, in its letter Italy had not requested that the procedure should be reopened. That fact was clearly demonstrated in the fifth paragraph of the letter. If the procedure was reopened no definitive conclusion would be reached. The letter should, of course, be officially published. As to the necessary procedure, further advice should be sought from Mrs. Iliopoulos-Strangas, one of the Country Rapporteurs. It would then be possible to send a reply to Italy saying that the supplementary information it had supplied had been published. In the previous discussion on the Committee's recommendations, it had been suggested that the term "racial" should not be used; otherwise serious problems, such as those in evidence in the letter, would arise.

62. Mrs. ILIOPOULOS-STRANGAS observed that she had been the Alternate Country Rapporteur and Mr. Gil Lavedra the Country Rapporteur. The letter under consideration posed a series of questions. Firstly, the Committee had been reproached for having included in its conclusions facts completely unrelated to torture. In fact, all the Committee's decisions dealt with different topics, not because it wished to interfere or exceed its terms of reference, but simply in order to try to explain the reasons for torture or because it was necessary to spell out which groups were most often affected by torture. The risk of criticism by States parties should certainly not be taken.

63. Given that the Convention did not provide for such action, it was unclear whether the possibility existed for States parties submitting reports to take a stance on the conclusions before submitting further reports four years later. Was that the first occasion on which a State party had expressed dissatisfaction with the Committee's conclusions? All Committee members were aware that, in doing their duty as independent experts, they were taking great

risks. Was it the customary practice for States parties to provide additional information? Rather than stating that the Committee had simply been misinformed, the letter appeared to say that it was interfering in matters unrelated to torture.

64. From a legal stand point, it was doubtful whether the Committee was bound by the resolutions and decisions of other bodies. Previously, racial issues had been discussed only in relation to the subject of torture; the remit of the Committee was not to consider racial issues relating to discrimination in public office. During discussion of the Italian report, the country's representatives had not questioned the fact that the majority of people tortured belonged to particular categories i.e. gypsies and foreigners. The State party appeared to be saying that the Committee had exceeded its mandate and had acted in an undiplomatic manner. It further considered that the Committee's judgement ran counter to the decision of another body set up under another Convention.

65. Mr. EL IBRASHI said that the Committee could not simply respond to the letter from the Italian Government by saying that it had considered the country's report and that the matter was now closed. That was so because the credibility and work of the Committee were at stake. It was necessary to know how to respond appropriately and also to face up to realities. Previously, the Committee had operated in accordance with the principle that once a decision had been taken not to allow any State to reopen discussions on conclusions adopted, the matter was closed. Otherwise any State would have the right to submit its views after receiving the Committee's conclusions and recommendations. If discussions were reopened, endless proceedings would result. All States should be treated in the same manner.

66. The three main points of the letter under consideration were the following. First, it was claimed, in relation to the Committee's terms of reference, that it had included in its conclusions subjects going beyond its sphere of competence. Such an accusation was a very serious one in that it questioned the Committee's credibility. Secondly, the issue of racial discrimination had given rise to much discussion at the previous session. Some members had felt that reference to that issue should not be made owing to its possible repercussions; such matters should be dealt with only by the Committee responsible for them. The Committee against Torture was not bound by the decisions of other bodies; but it was necessary to respond appropriately to the accusation that the Committee's view that certain racially discriminatory practices existed in Italy was at variance with the view of the Committee on the Elimination of Racial Discrimination (CERD). Thirdly, Italy maintained that the Committee's conclusion that torture existed directly contradicted remarks made by an NGO on the same subject. It was necessary to respond in an affirmative manner.

67. It was also essential to know what was in the new documentation . Was it merely information or was it a response to some of the problems raised in the Committee's conclusions? It needed to know in order to decide whether to publish the supplementary material provided. It must take due account of the wording of its recommendations and concerns before deciding whether to publish. A reasoned decision could then be taken.

68. Mr. SLIM said that his reaction to the content of the letter was mixed. On the one hand, he experienced the quite natural desire not to reopen the discussion on a report, submitted by a State party. On the other hand, he was surprised at certain statements in the letter, i.e. the apparent accusation that the Committee had raised issues that had nothing to do with the Convention. Furthermore, the letter appeared to state that the Committee had confused the Convention against Torture with the International Convention on the Elimination of All Forms of Racial Discrimination. In the Committee's discussion of that issue following submission of the Italian report, great concern had been expressed at the ill-treatment of certain foreigners as a result of racist reactions. That was confirmed in the Committee's annual report, paragraph 154 of which read:

> "The Committee notes with concern the persistence of cases of ill-treatment in prisons by police officers. It even notes a dangerous trend towards some racism, since the victims are either from foreign countries or belong to minorities."

The second sentence appeared to have been taken out of context, thereby enabling Italy to tax the Committee with concerning itself with racist reactions. However, the main issue of concern to the Committee was that of ill-treatment. It was impossible to remain silent in the face of such a distortion of what was clearly written. The content of the supplementary information accompanying the letter was as yet unknown. Knowledge of its salient features was necessary so as to be able to discuss them appropriately.

69. Mr. BURNS said that the Committee should not be overly concerned with the content of the letter under consideration. The three complaints made by Italy could have been anticipated, given its situation and its hopes about what the Committee would say. He agreed with the procedure outlined by other Committee members. The Country Rapporteur should study the new material to see whether there was any reason for the Committee to change its position.

70. Further dialogue was only possible on the basis of the periodic reports. If it could be demonstrated that the Committee had misunderstood the facts, then that should be clearly stated: an indefensible position could not be maintained. However, that did not appear to be the case in the light of the report and the Committee's discussion on it. The definition of torture within the Convention was based on discrimination and therefore provided the Committee with the necessary jurisdiction. Furthermore, the discussion had concentrated on behaviour in prisons for which article 16 of the Convention provided the appropriate jurisdiction when cruel and inhuman punishment existed and was directed at a particular group. As long as the facts existed, the Committee's position was completely defensible.

71. It was unclear what Italy meant in referring to the fact that an NGO had denied the existence of cases of torture. The Country Rapporteur should seek clarification on that subject. The Committee should probably respond with a letter to Italy acknowledging its concerns and stating that the Committee felt its original position was justified, if that was indeed the conclusion drawn. In that case the additional material sent would be placed in the Committee's files.

72. Mr. YAKOVLEV said that it was necessary to ascertain the views expressed in the additional material so as to produce a thoughtful and reasoned reply. The Italian letter did not disprove the facts alleged in relation to paragraph 154 of the annual report; the challenge issued was purely formal. The CERD had not confirmed the existence of racism, but the Committee, on the basis of its findings that the victims were from foreign countries or from minorities, had stated that some racism existed. Contrary to what was said in the fifth paragraph of the letter, the committee could request the State party to respond. The point raised by Italy was invalid since a request for a reply was entirely within the Committee's remit. In addition, it was for the Committee to decide whether the facts under consideration were relevant to the Convention or not. The Committee's findings in relation to racial discrimination as set out in paragraph 154 of the annual report, should be maintained, irrespective of the findings of another Committee. All in all, a thoughtful and well-reasoned letter of reply was necessary.

73. The CHAIRMAN said that the letter from the representative of Italy would be given to the Country Rapporteur, who would outline its salient features at a forthcoming meeting.

The meeting rose at 1.05 p.m.